

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Broadcast Localism

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MB Docket No. 04-233

COMMENTS OF COLLEGIATE BROADCASTERS, INCORPORATED

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1. Collegiate Broadcasters, Inc. (“CBI”), representing member stations, students, and faculty advisors involved in radio, television, webcasting and other related media ventures, is filing these comments regarding broadcast localism in response to the Commission’s Notice of Inquiry.

I. Localism Overview

2. Localism has traditionally been one important way that Congress and the FCC have tried to achieve the broader goal of diversity, beginning with the allocation of licenses “among the several States and communities as to provide a fair, efficient, and equitable distribution” of stations.¹ The system of government in the United States rests on a similar scheme (elected officials representing populations in a specific geographic area). Although local media and local program content may be important for several reasons—as outlets for local expression, or as factors in the local economy, for example—they may be only one or a few of the options that ultimately contribute to the full range of diversity. Nevertheless, localism takes on particular significance because of the importance of local information to individual communities and to the political process. Terrestrial broadcast stations, limited to their local signal coverage, are uniquely qualified and able to deliver local service.

3. In contrast to the development of broadcasting elsewhere,² localism has been at the foundation of U.S. policy from the beginning.³ Beginning with the 1927 Radio Act, Congress

¹ 47 U.S.C. §307(b).

² See, e.g. Thomas A. McCain and G. Ferrell Lowe, *Localism in Western European Radio Broadcasting: Untangling the Wireless*, J. COMM., Winter 1990 at 86. “European audiences had only a few alternatives to national broadcasting services during their growth period.” *Id.*

³ The general principle of localism, even as applied to communication, traces its roots much further back in history. Americans have historically been wary of concentrated central authority, as reflected in the federalist government structure. “The pervasive desire of the American people to diffuse political power encourages commitment of power

and the Commission have attempted to provide (or at least encourage) diversity through "local service." Policies addressed localism in two fashions: (1) most frequently as "spatial" or "geographic" localism, exemplified by the distribution of licenses to various communities and the preference granted to local ownership in initial licensing in comparative hearings; and (2) "audience" or "social" localism, the bedrock obligation of licensees to identify and program for the needs and interests of the audience in the community they are licensed to serve. The question for policymakers and licensees is how one conceives the media audience: as a mass (a single "community," defined by locale) or as individuals who collectively make up a number of "communities" within the contour of a station's signal (or, increasingly, irrespective of locale). Thus, it is possible to conceive of a community in various ways because some needs and interests may be defined by taste while others are more closely related to geographic space. Commission policies and licensee practices need to take both into account.

4. Although the Commission has, over the years, had policies recognizing both notions of localism, it is the geographic structural approach that provides the basis for most current FCC regulations. Policies that directly addressed programming and the audience within a geographic framework⁴ have been eliminated or greatly reduced in terms of their formal requirements since 1980. Recent instances where the industry and policymakers have been asked to consider localism (and diversity) from an audience perspective have met stiff resistance from many broadcasters and some at the FCC.⁵

5. As far back as the Radio Deregulation proceeding, the Commission seemed to recognize the problem, noting the tension between structural policies and the goals they were intended to achieve, and even hinting at recognition of an audience-centered localism policy (albeit one driven by market forces) as a means of fostering diversity and meeting the public interest.

The growing awareness of diversity includes awareness that communities of common interests need not have geographic bounds....

The economics of radio...allowed that medium to be far more sensitive to the diversity within a community and the attendant specialized community needs. Increased competition in large urban markets has forced stations to choose

to local entities." Tom A. Collins, *The Local Service Concept in Broadcasting: An Evaluation and Recommendation for Change*, 65 IOWA L. REV. 553, 569 (1980). More to the point, the local marketplace has been viewed for centuries as the appropriate forum for trading in (political) ideas as well as commodities. Richard A. Schwarzlose, *The Marketplace of Ideas: A Measure of Free Expression*, Journalism Monographs, Dec. 1989.

⁴ E.g., Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 F.C.C. 2d 650 (1971) and Ascertainment of Community Problems by Broadcast Applicants, 57 F.C.C. 2d 418 (1976) (policies requiring broadcasters to both determine and address the needs of many "communities" within their service area). See also Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949) and *Red Lion Broadcasting v. FCC*, 395 U.S. 367 (1969) (the Fairness Doctrine, requiring broadcasters to (a) provide coverage of controversial issues of importance in their community and (b) provide a reasonable opportunity for presentation of contrasting views on such issues).

⁵ E.g., Low Power FM (LPFM) and satellite-delivered Digital Audio Radio Services (DARS) such as XM and Sirius.

programming strategies very carefully. Some stations seem to have taken a traditional approach, seeking to attract wide audiences and general advertisers....

The fragmentation of markets among many competing stations, however, has apparently made an alternative strategy--specialized programming to attract a narrow audience of interest to specialized advertisers--increasingly attractive....

Radio has become increasingly profitable while this trend toward specialization has developed. This would suggest that both audiences and advertisers are pleased with the results.⁶

Policy choices since 1980 that addressed the public interest in diverse, local programming rely almost exclusively on geographic structural factors and the licensees' general (unstructured) bedrock obligation to serve their community. With the possible exceptions of the children's television rules and the political broadcasting requirements, the FCC generally leaves programming choices up to individual licensees.⁷

6. Nevertheless, in this *Notice of Inquiry*, the Commission now asks whether there are means other than ownership rules of effectively promoting localism and proposes to "address behavioral rules that promote localism, regardless of identity of ownership."⁸

II. Localism Topics

A. Communication With Communities

7. The Commission asks whether there are other steps that could "further broadcasters' communication with communities,"⁹ specifically whether there are better ways in which broadcasters can determine the problems, needs, and interests of their communities; and whether market forces sufficiently further the goal of ensuring that broadcasters air programming responsive to the needs and interests of their communities?

8. As a preliminary matter, the Commission must first settle on a definition of "community." Conceptually, community can take many forms, from a material physical space with discrete boundaries (for example, geo-political entities such as cities, states, and countries) to a purely socially produced space existing primarily, or solely, in the mind of its inhabitants (often described, for example, as "communities of taste"). In terms of media, the elements

⁶ *In re Deregulation of Radio*, Notice of Inquiry and Proposed Rulemaking, 73 F.C.C.2d 457, 489 (1979).

⁷ The radio deregulation proceeding ended formal ascertainment guidelines as well as news and public affairs requirements that had previously accounted for much local programming. *In re Deregulation of Radio*, Report and Order, 84 F.C.C.2d 968 (1981). A later inquiry accomplished the same changes for television. Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, *Report and Order*, 49 Fed. Reg. 33,588 (1984). The so-called "format cases" eventually relieved the Commission of its responsibility for preserving unique radio programming in a market. *FCC v. WNCN Listener's Guild*, 450 U.S. 582 (1981). The Fairness Doctrine was eliminated just a few years later. *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989); see also *In re General Fairness Doctrine Obligations of Broadcast Licensees*, 102 FCC 2d 145 (1985).

⁸ In the Matter of Broadcast Localism, *Notice of Inquiry*, ¶5.

⁹ *Id.*, at ¶11.

common to either definition are the presumption of community members' shared interests and needs and the media's ability to serve and perhaps shape those interests.

9. Traditional localism, in the Communications Act and a variety of broadcast policies, leans heavily toward the former definition, generally casting community in terms of stable, independent, Jeffersonian villages. This view of community finds its clearest expression in the framework of broadcast licensing¹⁰ and the emphasis on community as a single city (of license), or as more recently, in the Arbitron Metro market definition.¹¹

10. In a reexamination of its suburban community policy,¹² the FCC explicitly sought comment on the definition of "community," in particular "whether the term 'community' should be redefined for §307(b) purposes . . . to mean, not the [city of license] but the metropolitan area covered by the signal of the proposed station."¹³ This was a side issue in a rulemaking primarily focused on a larger localism question (whether suburban cities of license had distinct, discoverable and possibly unmet programming needs; and whether the policies mentioned substantially addressed those concerns without creating even greater problems). Then-Commissioner Stephen A. Sharp proposed that the answer to the alleged problems with the doctrines affected by this rulemaking lay in shifting the FCC's understanding of community in relation to the charge of §307(b).¹⁴ However, this (re)definition of community did not alter the fundamental reliance on a geo-political framework ("community" equals Standard Metropolitan Statistical Area instead of city of license).¹⁵ After considering the comments, the Commission decided that a change was not warranted. Thus, the relevant definition of community remained geographical in nature and the relevant audience was bounded by the city of license.

¹⁰ E.g., the FM Table of Allotments and related licensing procedures. 47 C.F.R. §73.201 *et seq.*

¹¹ In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; and Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area, *Report and Order and Notice of Proposed Rulemaking*, at ¶ 239. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-127A1.doc.

¹² This policy was one of several focused on the intent of applicants for new stations in major metropolitan areas. An applicant proposing to offer new service to a suburb would receive a preference over one proposing additional service for the larger central city. This particular policy stated that AM applicants whose 5 mV/m daytime contour penetrated the city limits of any community whose population was at least 50,000 and was more than twice the size of the applicant's specified city of license would be presumed to be realistically proposing to serve the larger city. 2 FCC 2d 190 (1965).

¹³ *In re The Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy, Report & Order*, 93 FCC 2d 436, 441 (1983).

¹⁴ *Id.*, at 461-466 (Dissenting Statement of Commissioner Stephen A. Sharp).

¹⁵ The Commission displayed a bit of schizophrenia on the issue, however. In another section of the Report explaining their reasoning for abandoning the policies in question, the FCC noted the existence of "discrete markets" defined by "ethnicity, educational level, or cultural preference" within the large geographic region defined by a station's signal. *Id.*, at 450. This definition of "market" (as opposed to "community") recognizes that the connections between individuals--and their programming tastes and needs--are frequently better defined by factors other than geography.

11. For most of us, a sense of community synthesizes external and internal factors. It is constantly reformulated using elements of both material nature and mental space. Yet, it is distinguishable from either one.¹⁶ The best contemporary definitions of community recognize this synthesis, emphasizing the factors that affect community formation, and the process of formation itself. Moreover, this model of community assumes people are actively involved, reacting to pressures of large-scale social systems and attempting to access, claim and control available resources.¹⁷ Community members develop sets of commonly held beliefs, shared principles and practices (in some cases explicitly including the ritual sharing of information); and membership in the community may or may not include geographic proximity. In other words, community is less a “thing” and more a “process” (or, more accurately, a multitude of processes that bind a group of individuals together, and also larger groups of groups together).¹⁸

12. Broadcasting is clearly a part—but only a part—of that process, and the broadcast media are seldom, if ever, isolated purely within tight geo-political boundaries. Rather, the space and time transcending nature of electronic media make them ideal vehicles for supporting communities independently of existing geo-political units. Thus, the Commission should recognize that “community” is most effectively defined from the bottom up—by all of the community members—not from the top down by the Commission (or by particular broadcasters). Licensees should be able to serve communities defined by interests and needs as well as by geography. As the Commission recognized in the Radio Deregulation rulemaking, not all licensees need to serve all of the needs and interests of the market (or markets) they cover. A community’s needs and interests can be effectively met by the cumulative efforts of all licensees in a market.

13. To effectively communicate with those communities, broadcasters and the Commission must recognize that a concept (market forces) that treats the viewer or listener as a consumer may have some overlap with local programming that treats the individual as a citizen, but it is absurd to argue that the two are identical. The marketplace of ideas that broadcasters are a part of should serve both ends; but programming we want as consumers is not always the same thing as the programming we need as citizens.¹⁹ The market will always effectively provide the former in a commercial system, at least for the majority of the audience; it may or may not provide the latter.

14. A significant local presence in the community is the best way to ensure effective communication with the residents of a licensee’s listening or viewing area, and their participation

¹⁶ See Edward Soja, *POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY* 120 (1989).

¹⁷ Barry Wellman, *The Community Question Re-evaluated*, 1 *COMPARATIVE URBAN & COMMUNITY RESEARCH* 81, 82, 96 (1988).

¹⁸ See Steven G. Jones, *Understanding Community in the Information Age*, in *CYBERSOCIETY* 10, 16-17 (Steven G. Jones ed., 1995).

¹⁹ See Theodore L. Glasser, *Competition and Diversity Among Radio Formats: Legal and Structural Issues*, 28 *J. OF BRDCST.* 127 (1984). We would also note that the Supreme Court has never reversed their oft-quoted statement in *Red Lion v. FCC* that it is the audience’s right to hear, rather than the broadcaster’s right to speak, which is paramount (395 U.S. at 390).

in the process. Satellite, cable, and online media are all suitable platforms for automated programming fed to a mass audience from one location. Local broadcasting—radio and television—is a special regulatory case. The Commission’s rules support this concept in (a) the main studio rules; (b) the quarterly list of issues and programs; and (c) the public file requirements. Each could be adjusted to better encourage broadcasters to be more responsive to the local needs of their community while maintaining maximum flexibility for licensees in how they serve those needs.

15. The licensee’s main studio needs to be staffed locally; however, it should not be only acceptable to meet the staffing or the public inspection file requirements at one particular site. In the case of non-commercial educational stations, a nearby church, university administrative office or local governmental agency should be permissible as the site of greeting visitors and providing access to the public file.

16. Many student-operated stations find the main studio staffing requirement problematic. The staffing requirement (see *Jones Eastern*²³) places an undue burden on many stations. A common 'management' scenario at CBI stations includes a licensee which is the college or university itself. Faculty, staff and primarily students are given the duties of station management. In many cases, students are the only form of station management. Due to varied class schedules and other activities, at least some “student stations” are unable to meet the regulatory requirement of having a meaningful management presence *during business hours*, yet the overall management presence in most cases far exceeds 40 hours per week. Indeed, those later (or earlier) hours may be more convenient for many other members of the community.

17. With advent of automation techniques and unattended operation rules, some stations are completely unmanned during “normal business hours,” yet they are not unresponsive to the community needs because they do staff the station for significant portions of the week with both a staff and management presence.

18. CBI proposes that the main studio staffing standards developed in *Jones Eastern* be relaxed specifically for these types of stations. The Commission could allow a significant management presence at these stations to be defined by alternative criteria that allow the community to interact with station management outside of “business hours.” In doing so, the Commission should consider the enhanced means and opportunities to interact with station management in this communications age. Station management is often available to the community via alternate means of communication, including such options as e-mail, voice mail, electronic messaging, cell phones and other developing means of communication. While these alternatives will not satisfy all needs for in-person communication, they will alleviate the staffing burden and allow interested parties to coordinate a mutually agreeable meeting time with station management when a face-to-face meeting is desirable or required.

²³ 6 FCC Rcd 3615 (1991)

19. In order to facilitate access to station management, the station could be compelled to post on its website a means of communication with management if it does not meet the current rules concerning presence at the main studio. It could also be compelled to post a notice at the main studio to provide information allowing any interested party a means to contact the management.

20. Given the ability in this age to reach and communicate with station management and the scenario described above that would allow a station to operate during business hours in an unattended mode, CBI asks for an elimination of the staffing requirement with respect to these stations, provided that access to the public file is maintained. Given the history of the main studio rule, CBI believes that the non-management portion of the staffing requirement is intended to assure a presence and access to station documentation, such as the public file.

21. Commercial and non-commercial stations can provide non-management presence in the form of an employee who is hired specifically to meet the letter of the rules. Such an employee could have little or no familiarity with the operation of the station and, in essence, be useless to the public. Given this scenario, we suggest that the staffing requirement be eliminated with respect to non-management personnel at non-commercial educational stations that do not exceed the level of staffing required to subject the licensee to the Equal Employment Opportunity rules. This change should only be acceptable to the Commission if the public file is made accessible at another location that is reasonably accessible to those seeking access.

22. For instance, a station that has adequate management presence under the proposal above could place a copy of the public file at the campus library, counsel office or other location that is located on the same campus as the main studio. Consistent with the above proposal, the station should be compelled to make the location of the public file accessible to the public via a sign at the main studio and, if it has one, via its website. Consistent with current rules, the station could also make the public file available via the Internet or a campus networked computer.

23. The main studio rules exist specifically to serve the Commission's localism goal. Through the years, these rules have been watered down to allow stations to not maintain a local studio within the original community but they still require the station to provide reasonable access. These changes have largely been implemented to allow licensees to locate their studios in the most economically advantageous location. Moreover, waivers to the main studio rules are commonplace. While well intended, these rules continue to dilute the local presence of a station.

24. CBI agrees strongly with the current flexibility concerning the location of the main studio and the waivers currently in place. The Commission may wish to consider whether there is a need to make the waiver process more stringent, so that main studios are not mere illusions designed to serve the letter, but not the intent, of the rules.

B. Community Responsive Programming

25. The Commission asked a number of questions in the Notice about the nature of licensees' service to their community through programming and other activities. CBI will address only a few of those.

26. Programming is far from the only way college stations are involved in their communities. Increasingly, college and educational stations are developing an Internet presence. Through these communication portals, stations continue to extend information about their communities. For example, KDVS provides an entertainment calendar ([http://www.asucd.ucdavis.edu/radio/entertainment_calendar.cfm?title=Entertainment Calendar](http://www.asucd.ucdavis.edu/radio/entertainment_calendar.cfm?title=Entertainment+Calendar)), a Hip Hop Calendar and a Folk calendar, an interactive public affairs forum. KJFC hosts pages concerning local concerts and clubs, WICB offers a community events page (http://www.ithaca.edu/radio/wicb/community_events.html), KXUL provides local weather information from the national weather service fed by RSS.

27. Many college stations program events and activities off the air as well as on the air that contribute to the local community in substantial ways. For example, CBI members have developed projects involving K-12 students in on-air and off-air activities such as on-air originally written and produced radio dramas, talk shows and news reporting as well as off-air work with local schools on literacy projects, fundraisers, and promotion of community programs.

28. Many colleges and universities face tensions between the community in which they live and the students who attend their institution (so-called 'town and gown' issues). College radio stations serve both audiences and are in a unique position to address areas of overlapping concerns. For instance, nationally-known speakers who come to campus are of interest to the community as well in many cases. College stations do a great public service by publicizing these events and an even greater service by broadcasting live, time-shifting, or holding separate interviews with the speaker that a larger audience can hear. Another example would be producing public affairs programming that promotes understanding and communication between the town/city and the college/university.

29. CBI strongly believes that if the Commission were to develop any sort of localism review of stations at license renewal time, the unique characteristics of college and other non-commercial stations' programming choices must be considered and weighed heavily as a contribution to the local culture and needs of the community. One additional way the current system could be strengthened would be to provide incentives for all licensees to produce at least some local programming dealing with the local issues through some sort of preference for licensees that originate programs locally.²⁴ For initial licensing, this could be in the form of a bid multiplier or bonus for commercial stations pledging a certain level of locally originated programming or a comparative hearing preference point for non-commercial licensees making a similar pledge. At renewal time, the rule could take the form of a graduated scale system up to some maximum point (perhaps based on the percentage of a licensee's quarterly list that was locally originated); or, as in the children's television rule, could be a baseline threshold of some amount of locally originated, issue-oriented programming per week. Additional points might be

²⁴ Such a preference is currently used for LPFM. In the Matter of Creation of Low Power Radio Service, *Report & Order*, 65 Fed. Reg. 7615, 7631-7632 (2000).

available for stations airing such programming between 7 a.m. and 10 p.m.²⁵ As in the case of the children's television rules, compliance with the rule would create a presumption of exemplary service to the community, but the programming that substantially complies with the rule need not be the only way a station can demonstrate such service.

C. Underserved Audiences

30. Many CBI member stations, and college broadcasters generally, pride themselves on providing programming not available elsewhere. Many stations claim their mission specifically as offering a diverse selection of programming, targeting unserved and underserved audiences in their communities with an eclectic collection of music, talk, news, and sports. The structure of these stations and the make-up of their campuses and communities leads them to be highly responsive to a diverse and frequently contentious community. As noted above, the reintroduction of something akin to the ascertainment guidelines would merely add bureaucratic redundancy to the already harried life of most student broadcasters and faculty advisors. They hear every day from the community members about their programming choices, good and bad.

31. In the Radio Deregulation rulemaking, the FCC concluded that the costs of the formal ascertainment procedure then in place outweighed the benefits, and that licensees could adequately determine individually appropriate procedures for determining the program needs and interests of their community. Most CBI member stations are operated primarily or completely by volunteer labor. As such, they lack the full-time professional staff to adequately conduct formal ascertainment. At the same time, the nature of these stations makes them more responsive than many commercial operations to less formal community input. The volunteers are in regular contact with a wide range of community members, through other organization memberships, fundraising activities, outreach programs, and other communication channels. The licensee (frequently a school's board of trustees or similar) is another conduit to the community, and a means by which members of that community can (and do) shape programming.

32. Much of that programming is focused on underserved (or unserved) audiences. Our member stations' missions frequently address the need to serve many audiences that are not attractive to larger broadcast operations. College and educational stations typically are the poster children when it comes to airing music and other forms of programming that is responsive to the needs of the underserved communities. Indeed, college broadcasters are frequently derided by our commercial brethren for not paying more attention to the commercial viability of our programming and our listening or viewing audience.

33. Our member station licensees happily play that role, providing exposure for numerous little known bands rather than the latest hits from a handful of megastars; providing a thoughtful forum for discussion of local community issues instead of a shouting match between a couple of over-hyped pundits; and asking first "how does this serve our audience" rather than "how much can I sell this audience for."

²⁵ Cf. children's television rules, outlining the characteristics of service expected in that area, along with license renewal processing guidelines for station's complying. In the Matter of Policies and Rules Concerning Children's Programming, *Report and Order* (MM Doc. 93-48, 1996). Available at http://www.fcc.gov/Bureaus/Mass_Media/Orders/1996/fcc96335.htm.

34. To more effectively further the goal of localism, the Commission needs simple rules that encourage and reward stations for involving the community in issues of local interest. The rules should be based on principle rather than a detailed list of actions quantified requirements for specific genres of programming.²⁶ The rules must recognize that NCE stations often don't have many (or any) paid staff and rely on volunteers for the bulk of their work.

35. Therefore, CBI opposes any return to formal ascertainment and recommends that if the Commission were to pursue a more formal ascertainment procedure, there should be exemptions allowed for non-commercial educational stations with fewer than 5 full-time employees. We address other incentives for local service below.

D. Centralized Control of Content

36. Radio has always had the potential to be the most local and diverse medium. The economics of programming are favorable compared to television, newspapers, or magazines. But the multitude of regulatory, technological, and economic changes since deregulation in 1980 (including the dramatic growth in the number of licensed stations; satellites as a means of distributing programming; frequent, speculative, and highly-leveraged trading of licenses; the raising or elimination of ownership caps; and greater competition among all media for a limited pool of revenue) has resulted in tremendous centralization of programming throughout much of the industry. Network formats delivered by satellite, voice-tracked programs originating halfway across the country, and totally automated program services characterize much of commercial radio outside of the large markets (and sometimes even there). Happily, this robotic approach is seldom characteristic of college radio.

37. Nevertheless, CBI views it as a broader problem affecting all of us, one characterized by the arguably fraudulent promotion example cited by the Commission in the Notice of Inquiry.²⁷ Every licensee should have an interest in our medium being viewed as trustworthy. When a station positions itself as "local" but is using air talent from far away and running contests that involve not only the local audience but listeners in dozens or hundreds of markets, the audience is being misled. Even if the deception does not rise the level of legally prosecutable fraud, it gives the people in our communities one more reason to not trust us.

38. The Commission should require that contest rules, announcements, and any associated promotional materials (such as direct mail or point-of-purchase merchandising at participating sponsors), clearly explain the scope of the promotion (the number of stations and markets participating).

39. Playlists, like all broadcast programming decisions, ought to be made in the interest of the local community. The willingness of many licensees in recent years to cede effective programming control as part of network contracts or less official arrangements, arguably demonstrates a lack of fitness as a licensee and should be condemned. However, the

²⁶ See ¶29 above.

²⁷ In the Matter of Broadcast Localism, *Notice of Inquiry*, ¶38.

issue also raises clear First Amendment concerns. And for radio, at least, many of the abuses frequently cited (relationships with independent promoters, for example) seem to have been curbed of late. CBI believes strongly in the need for local control of programming, but also believes that such control cannot be effectively legislated without constraining licensees free speech rights.

40. Voice-tracking presents a similarly tough legal challenge, at least in part because what might constitute giving the audience the impression that the air talent is “one of them” is vague at best and is probably impossible to accurately define and control in any way that would be consistent with the Commission’s statutory and constitutional authority. Further, the Commission noted that voice-tracking can refer to the importation of “popular out-of-town personalities,” but it did not recognize that it can also be used as a means to stretch the available local talent (for example, the live afternoon DJ can also be the overnight DJ without needing to be present at the studio). Voice-tracking is not as easily defined in fraudulent practice rules as promotional contests. CBI would suggest that the Commission defer to the judgment of individual licensees as to appropriate use of this technology.

E. Additional Spectrum Allocations

41. In the localism notice, the Commission asks a number of questions that should be rhetorical, but are posed as questions and solicits comments. Perhaps this is because the Commission already knows the right course of action, but is afraid of the fall out. In the opening of the NOI, the Commission states, “Broadcasters, who are temporary trustees of the public’s airwaves, must use the medium to serve the public interest, and the Commission has consistently interpreted this to mean the licensees must air programming that is responsive to the interests and needs of their communities of license.”

42. The Commission further notes that translators “are not permitted to originate programming themselves, except for emergency warnings of imminent danger and announcements, limited to thirty seconds per hour, seeking or acknowledging financial support.”

43. Conversely, LPFM stations were created to enhance localism in the local communities. The only way a translator operator could argue that a translator does more for the local community is if the translator enhances the local coverage of the primary station. The satellite fed translators, for the most part, do nothing to enhance localism and actually impede localism on the airwaves by preventing LPFM’s from coming into existence. The benefit to the community is lost. These translators are nothing more than an informal network of money making machines, while the LPFM stations that could exist in their place would be required to generate local programming under the commissions rules.

44. The Commission asks, “What effect do these policies have on localism?” The answer is obvious: it stifles it. The Commission also asks, “How do our policies for translators affect the availability of spectrum for LPFM, and should we change any of our rules to give preference to entities with a local presence and/or local programming?” It is obvious that the current policies restrict and, in many cases eliminate spectrum for LPFM stations. The rules should be changed to give LPFM stations preference over non-local translator services, with one

added requirement for the LPFM station. LPFM stations that replace existing translators should be required to have both receive and transmitting EAS devices that are compliant with section 11. The result would be a new local service that enhances localism while not reducing the availability of local emergency information.

45. In reviewing comments and proposals on this specific topic, we urge the Commission to read the many comments filed by listeners to ‘translators’ with much caution. While there are genuine and well informed comments filed in this proceeding, there are a large number of comments that make inaccurate assumptions or demonstrate a complete lack of understanding of the issues at play. For instance, one comment (http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516791515) claims that removing the protections for translators in favor of a local LPFM station would deprive the listener of the service they love. Yet the information they provide in the letter allows us to determine that the station being referenced is a full service, Class C2 station, not a translator. Another example can be found at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516791506. This letter references two stations which can be identified using the FM query service on the Commissions web site. Both stations are full service stations with one a C2 and the other a C1.

46. If the Commission is to give any weight to the arguments in support of translators over LPFM’s, the sheer volume should not be counted. Each and every argument should be given scrutiny to determine if the comments are based on facts or fear mongering fostered by those seeking to protect their self-interests over the interests of true localism.

47. In the Low Power FM rulemaking, the Commission recognized that locally responsive service was essential. Although both translators and LPFM may provide valuable service, locally originated programming should remain a particularly favored class of content. Therefore, CBI suggests that the Commission freeze the translator application process, and continue to encourage Congress to act on the Mitre report recommendations. Furthermore, the Commission should continue to expedite processing of the existing LPFM applications, and should consider opening the second-round LPFM application windows. Again, opportunities for locally-originated service should take precedence over applications for out-of-market translator service.

III. Conclusion

48. CBI member stations will continue to provide exemplary local service to their markets. In any subsequent actions, we strongly urge the Commission to consider the local nature service those stations have historically provided, and the budget and staffing constraints they must overcome in providing that service. Any new localism requirements should include sufficient flexibility for licensees to implement the rules within the context of their particular situations. The best judge of local needs remains a locally based licensee.

Respectfully Submitted,

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